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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/519,959   | 12/30/2004  | Maano Milles         | 4171/5/2            | 5414             |
| 27614 7590 05/13/2008<br>MCCARTER & ENGLISH, LLP<br>FOUR GATEWAY CENTER<br>100 MULBERRY STREET<br>NEWARK, NJ 07102 |             |                      |                     |                  |
| EXAMINER   |             |                      |                     |                  |
| MATTER, KRISTIN CLARETTE   |             |                      |                     |                  |
| ART UNIT   |             | PAPER NUMBER         |                     |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/519,959

**Applicant(s)**

MILLES, MAANO

**Examiner**

KRISTEN C. MATTER

**Art Unit**

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 22-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This Action is in response to the amendment filed on 2/22/2008. Claims 1-21 were cancelled (note that in the listing of claims only 1-20 were indicated as being cancelled and 21 is omitted). Claims 22-41 were added and are currently pending in the instant application.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 22-41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 22, 29, and 36, lines 7-8 of claim 22 recite “having a plurality of vents and an outlet; a vacuum source connected to the outlet;”. However, a plurality of vents, a vacuum source and an outlet for connection thereto has already been claimed so it is unclear what has these elements (i.e., the housing, the apparatus, etc.) and if they are different from those elements already claimed.

In addition, claim 29 recites “a vacuum source” in line 3, but it is unclear as to which vacuum source mentioned in claim 22 is being referred to.

In addition, claim 36 recites the limitation “the perforated housing” in line 3 and “a vacuum source” in lines 3-4. There is insufficient antecedent basis for these limitations in the claim.

Claims 23-28, 30-35, and 37-41 are dependent on claims 22, 29, and 36, respectively, and are therefore rejected for the same reasons outlined above with respect to those claims.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22, 23, 27, 29, 30, 31, 33, 36, 37, 39, and 40, as best understood by the examiner, are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosso (US 5,195,512) in view of Guevrekian (US 5,715,813).

Regarding claims 22, 29, 30, 36, and 37, Rosso discloses an apparatus for scavenging exhaust gas from a patient comprising a continuous tube (24) having a length dimension that can be considered a housing or collar in the sense that the tube is placed about the patient's neck for removing exhaled gas from the mouth and nose area (abstract), said tube comprising at least one vent and an outlet (see Figure 2), said apparatus further including a vacuum source (28) detachably connected to the outlet and in communication with the tube (column 1, lines 62-63). While Rosso does not expressly disclose the scavenging of anesthesia, resort is had to Guevrekian, which teaches scavenging of anesthesia (column 1, lines 5-17) for the purpose of preventing contaminating the working area. Inasmuch as Rosso discloses the removal of exhaled gases from a patient's mouth and nose area, it would have been obvious to one of ordinary skill in the art at the time the invention was made to also removed exhaled anesthetic from a patient's

mouth and nose area because it would have prevented anesthesia gas from contaminating the working area as taught by Guevrekian.

Regarding claims 23 and 31, the tube disclosed by Rosso has two closed ends (24a and at the connection to the vacuum source) and the outlet (i.e., one of the vents 30 can be considered an outlet) is positioned centrally between the ends (see Figure 2). It is not clear what must generally define a T-shape, so depending on what all is considered part of the housing (i.e., the rigid bar 20, the table, etc. in addition to the tube 24 can be considered the housing) a T-shape can be said to be generally defined either by the attachment part (16) and the rigid tube (20) or the table itself (see Figure 1), for example.

Regarding claim 27, although Rosso does not disclose the tube itself being rigid, Rosso discloses the need for rigidity to properly position the tube (column 2, lines 45-50). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the tube itself rigid to minimize the number of parts needed to position the tube about the patient's neck.

Regarding claims 33 and 39, Rosso discloses straps (26) for retaining the tube about a patient's neck.

Regarding claim 40, Rosso discloses the apparatus as being draped over a patient's chest and shoulders (column 2, line 57-column 3, line 15).

Claims 34 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosso and Guevrekian as applied to claims 22, 23, 27, 29, 30, 31, 33, 36, 37, 39, and 40 above, and further in view of Brekke et al. (US 5,151,843). The difference between Rosso as modified by

Guevrekian and claims 14 and 21 is a vacuum line also being interconnected with a nasal mask vacuum line. Brekke et al., in an anesthesia scavenging system, teach a vacuum line (57) being interconnected with a nasal mask vacuum line (Figure 8) for the purpose of evacuating exhaled gases from the patient's nose (column 3, lines 39-43). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a means for evacuating anesthesia within the gases being exhaled from a patient's nose as taught by Brekke et al.

***Allowable Subject Matter***

Claims 24-26, 28, 32, 35, and 38 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments filed 2/22/2008 have been fully considered but they are not persuasive.

In response to applicant's arguments that Rosso apparatus is not designed for applications where the patient is upright or for adjustable location adjacent the nose and mouth, these arguments are not commensurate with the scope of the claims. In addition, the VELCRO straps of Rosso would allow adjustable placement of the device with respect to a patient (i.e. could hang lower in certain areas than other, for example).

In response to applicant's argument that one would not combine Guevrekian with Rosso, examiner notes that Guevrekian is cited merely to show that it is well known that anesthesia commonly needs removed from operating sites because Rosso does not mention what type of gases are being evacuated with the disclosed system. It would have been obvious for one of ordinary skill in the art to remove anesthesia from the operating site using the system of Rosso because as taught by Guevrekian and as well known in the field, excess anesthesia often needs removed from operating sites so that it does not effect other persons than the patient.

### *Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen C. Matter whose telephone number is (571) 272-5270. The examiner can normally be reached on Monday - Friday 9-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kristen C. Matter/  
Examiner, Art Unit 3771

/Justine R Yu/  
Supervisory Patent Examiner, Art Unit 3771